

INITIATIVE 735

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 735 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to the privacy of financial, medical, and other
2 personal information; adding a new chapter to Title 19 RCW; prescribing
3 penalties; and providing an effective date.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS. The citizens of the state of
6 Washington find and declare that:

7 (1) Individuals should have control over their personal information
8 and should have the power to decide about the collection, use, and
9 disclosure of information about them. This information may reflect the
10 individual's intimate life, including financial and medical conditions,
11 spending and travel habits, lifestyles, associations, work practices,
12 and political and religious interests.

13 (2) Despite the strong concern individuals have in preserving the
14 confidentiality of their personal information, transactional data and
15 other information from different sources are often collected in a
16 single place, compiled in dossier form, and routinely sold or otherwise
17 made available to insurance companies, prospective employers, lenders,
18 and others, including private investigators. These computerized
19 profiles may contain the most sensitive personal information such as

1 birth date, social security number, credit header information, unlisted
2 phone number, medical data, bank account numbers, PIN numbers, mother's
3 maiden name, long distance and cell phone records, credit card
4 purchases, driver license information, credit history, Internet
5 browsing and purchasing habits, and employment information.

6 (3) The rapid evolution of technology enables many individuals and
7 entities to gain access to private, personally identifiable information
8 without the knowledge or consent of the individual to whom the
9 information relates. As a result, there has been a dramatic
10 proliferation of large electronic data bases containing an array of
11 sensitive details about Washington residents. The existence of these
12 data bases and the disclosure of confidential information has led to
13 numerous adverse consequences including: (a) The rapid increase in
14 identity fraud crimes; (b) the proliferation of fraudulent, misleading,
15 intrusive, and deceptive telephone, direct mail, or Internet
16 solicitations; (c) undue embarrassment for individuals who have had
17 information revealed without their consent; and (d) the dissemination
18 of incorrect information that has led to the denial or refusal of
19 housing, employment, insurance, and other goods and services.

20 (4) Washington's citizens have a right to privacy and a reasonable
21 expectation that the personal information that they provide in
22 commercial transactions will be kept private and confidential. Every
23 business has an affirmative and continuing obligation to respect the
24 privacy of its consumers and to protect the security and
25 confidentiality of consumer information.

26 (5) No uniform law exists that creates a standard of conduct for
27 businesses to collect, use, and disclose personal information, and it
28 is in the public's and state's interest to establish protections for
29 Washington citizens.

30 NEW SECTION. **Sec. 2.** COLLECTION OF PERSONAL INFORMATION. (1)
31 Except as required or expressly permitted by federal or state law, a
32 business may collect personal information only with permission from the
33 individual to whom the information relates.

34 (2) For the function of performing a consumer-related request, a
35 business:

36 (a) May require the consumer to provide only personal information
37 reasonably necessary to process the request and must clearly state that
38 any additional information is optional;

(b) May require disclosure of the consumer's social security account number only after providing the consumer, in writing, the citation and text of the statutory authority that requires providing the number, and a description of how the number will be used;

(c) May not deny goods, services, or discounts to the consumer for refusal to provide optional information or to authorize nonessential uses or disclosures.

(3) A business is responsible for the integrity, confidentiality, and security of personal information in its possession or custody, including information it has disclosed to an affiliate or nonaffiliated third party.

NEW SECTION. Sec. 3. USE AND DISCLOSURE OF PERSONAL INFORMATION.

(1) Except as required or expressly permitted by federal or state law, a business may use personal information or disclose the information to an affiliate or nonaffiliated third party only for the purposes for which it was originally collected, unless the business obtains permission from the individual to whom the information relates.

(2) For the function of fulfilling a consumer-requested purpose, a business may disclose personal information to an affiliate or nonaffiliated third party only for the purposes for which it was originally collected, and if the affiliate or nonaffiliated third party agrees not to use or redisclose the information for any purpose other than that originally authorized or as required by law.

(3) Nothing in this chapter prohibits the disclosure of applicable information:

(a) That is not personally identifiable to the individual, or is public information;

(b) To the consumer upon his or her request and upon presentation of appropriate identification, or to an individual who is legally empowered by the consumer to obtain the information;

(c) To another individual if the person demonstrates that he or she has obtained the permission of the individual who is the subject of the information;

(d) To a governmental, regulatory, or self-regulatory authority, or consumer reporting agency, as required by federal or state law, for use solely in accordance with that law;

1 (e) To a court of competent jurisdiction, or under a search
2 warrant, court order, or subpoena, including an administrative
3 subpoena;

4 (f) In the case of a claim or litigation between the individual and
5 a company, to a counsel or other individual involved in the resolution
6 of the dispute; or

7 (g) To a person who needs the information because of an emergency
8 that threatens the life or health of the individual to whom the
9 information relates.

10 (4) Nothing in this chapter restricts the use, disclosure, or
11 retention of personal information by a nonprofit organization or a not
12 for profit organization for the purposes of membership contact or
13 solicitation of contributions. A nonprofit organization or a not for
14 profit organization is an entity as defined in chapter 24.03 RCW or
15 that has been granted tax-exempt status under 26 U.S.C. Sec. 501.

16 (5) For the purposes of this section, the sale for profit of state
17 records containing personal information is a commercial activity.

18 (6) Except to the extent otherwise provided by law, the
19 restrictions upon the disclosure of personal information as provided in
20 this chapter ceases upon the death of the person to whom it refers, and
21 if disclosure of the information does not contain personal information
22 about another individual.

23 NEW SECTION. **Sec. 4.** FURTHER PROTECTIONS FOR FINANCIAL AND
24 MEDICAL INFORMATION. (1) Except as required or expressly permitted by
25 federal or state law, a business may use financial or medical
26 information or disclose the information only for the purposes for which
27 it was originally collected, unless the business has obtained signed
28 permission from the individual to whom the information relates.

29 (2) A business may obtain signed permission for additional use of
30 financial or medical information or additional disclosure of financial
31 or medical information to an affiliate or nonaffiliated third party,
32 only if:

33 (a) The business supplies the individual with a written
34 notification of the following:

35 (i) The information to be used or disclosed;

36 (ii) The new use of the information or the purpose for which the
37 new disclosure of information will be made;

1 (iii) The entity or entities authorized to receive the disclosure
2 of information; and

3 (iv) The expiration date for authorization for use of the
4 information, which date is no more than one year from the signing date
5 of the permission;

6 (b) The entity or entities to whom the information is transferred
7 or disclosed is aware of its legal obligation and is subject to a
8 contractual obligation not to use or redisclose the information for any
9 purpose other than that stated in the notification;

10 (c) The individual has the opportunity to withdraw permission at
11 any time, subject to legal or contractual restrictions and thirty days'
12 notification.

13 (3) Except as required by law or court order, a business that
14 fulfills a request for financial or medical information under section
15 3(3) (c) through (g) of this act about a specific individual shall send
16 a written notice to the individual that the disclosure was made. The
17 written notification must contain the name of the person and entity who
18 requested access to the individual's information, the date of the
19 request, and a description of the information provided. Upon request
20 by the individual, the business shall also provide a copy of the
21 information provided.

22 (4) A business shall establish reasonable safeguards to ensure the
23 confidentiality and safety of financial or medical information and to
24 protect it from loss, misuse, theft, and unauthorized access,
25 disclosure, destruction, or alteration.

26 (5) A business that sells, leases, shares, transfers, exchanges, or
27 otherwise discloses financial or medical information shall keep for a
28 period of three years, records identifying each entity that receives
29 information, the type of information disclosed, the authorized purpose
30 for which the information was to be used, and the identity of the
31 individual about whom the information relates and shall make the
32 records available to the individual upon request.

33 (6) This section does not prevent the use of information in
34 research activities, and for use in producing statistical reports, so
35 long as the personal identifiers have been deleted and any personal
36 information is not published, redisclosed, or used to contact the
37 individual. Additionally, for the purpose of medical research, signed
38 permission for use of personally identifiable information must be
39 obtained for information that is collected after the effective date of

1 this act, and the expiration for authorization must be no more than
2 five years from the signing date of the permission.

3 NEW SECTION. **Sec. 5.** ACCURACY OF FINANCIAL AND MEDICAL
4 INFORMATION. (1) Financial and medical information should be as
5 accurate, complete, and up-to-date as warranted by the use and
6 sensitive nature of the information. Upon request by an individual and
7 upon presentation of appropriate identification, a business in
8 possession of financial or medical information about the individual
9 shall:

10 (a) Provide to the individual the personal information about him or
11 her maintained by the business;

12 (b) Permit the individual to verify any information about him or
13 her maintained by the company;

14 (c) Permit the individual to correct any error in his or her
15 information, and in case of dispute provide the individual with a
16 reasonable resolution process;

17 (d) Permit the individual to delete or destroy his or her
18 information, subject to legal or contractual restrictions;

19 (e) Disclose to the individual the use or uses of his or her
20 information and the names of any affiliates, nonaffiliated third
21 parties, or internal divisions that have access to the information;

22 (f) Acknowledge, in writing, the request within ten days, and
23 process the request within thirty days; and

24 (g) Provide the consumer-requested information free of charge
25 annually and provide additional copies at a fee not to exceed eight
26 dollars per report.

27 (2) A business in possession of financial or medical information
28 shall make readily available to individuals free of charge its specific
29 privacy policies and practices relating to the management of personal
30 information and the requirements of this chapter.

31 NEW SECTION. **Sec. 6.** PERSONAL INFORMATION RETENTION. (1) Except
32 as required by federal or state law, personal information may be
33 retained only as long as necessary for the fulfillment of the consumer-
34 requested purposes. Personal information that is no longer required to
35 fulfill these purposes must be destroyed, erased, or made anonymous
36 unless permission from the consumer is first obtained.

(2) Personal information that has been used to make a decision about an individual must be retained long enough to allow the individual access to the information after the decision has been made.

(3) A business that currently maintains personal information on a national basis, without permission from the individual to whom the information relates shall obtain permission, or in the alternative destroy, erase, or make anonymous the information within sixty days after the effective date of this act.

NEW SECTION. **Sec. 7.** DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means a business that controls, is controlled by, or is under common control or common ownership with another entity.

(2) "Business" means an individual, partnership, corporation, or other nonpublic entity engaged in commercial activities that involve the electronic data base storage of personal information regarding a Washington resident, but excluding an activity solely for journalistic, artistic, or literary purposes.

(3) "Consumer" means a natural person who purchases, leases, or otherwise contracts for goods or services that are primarily used for personal, family, or household purposes, and also means the legal representative of such an individual.

(4) "Consumer-requested purpose" means for the explicitly specified, and legitimate purpose of completing a transaction, establishing a business relationship, or providing a product or service, requested by the consumer.

(5) "Disclose" means to engage in a practice or conduct to make available and known personal information contained in a record about a person to another person, organization, or entity.

(6) "Financial information" means information identifiable to an individual that concerns the amount and conditions of an individual's assets, liabilities, or credit, including but not limited to account numbers and balances, transactional information concerning an account, codes, passwords, mother's maiden name, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, purchasing habits, and other information held for the purpose of account access or transaction initiation.

(7) "Medical information" means information that is personally identifiable to an individual or that can be associated with the identity of an individual and directly relates to an individual's medical status or condition. The term includes a record of disclosures of medical information.

(8) "Nonaffiliated third party" means an entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, a business, but does not include a joint employee of the institution.

(9) "Permission" means with the knowledge and affirmative consent by an individual before the collection, storage, use, or disclosure of the information.

(10) "Personal information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances but is not public information. Personal information does not include records containing information listed in a local phone directory plus city, state, and zip code unless additional identifiers are also included in the record.

(11) "Public information" means information about or relating to an individual that has been obtained originally from the records of a federal, state, or local government entity that are open for public inspection.

(12) "Signed permission" means a dated statement freely signed by an individual giving permission and is separate and distinct from any other document, and that contains a description of the information sought to be used or disclosed. If a consumer elects to supply an electronic signature, signature validation must comply with chapter 19.34 RCW, the Electronic Authentication Act.

NEW SECTION. **Sec. 8.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1) Unfair or deceptive invasion of privacy rights is not reasonable in relation to the development and preservation of business. The people find that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

(2) A violation of this chapter, other than section 4 of this act, is punishable by a fine up to five hundred dollars per violation.

1 (3) A willful violation of section 4 of this act is a misdemeanor
2 punishable by a fine up to three thousand dollars per violation and
3 possible forfeiture of all income resulting from the violation.

4 (4) Damages to a person who has been the victim of a violation of
5 this chapter, other than section 4 of this act, are liquidated damages
6 of five hundred dollars per violation, or actual damages, whichever is
7 greater. A court may increase the award of damages in an amount not
8 more than three times the actual damages sustained, or one thousand
9 five hundred dollars per violation, whichever is greater, upon a
10 demonstration that a violation of the chapter was willful.

11 (5) Damages to a person who has been the victim of a violation of
12 section 4 of this act are liquidated damages of one thousand dollars
13 per violation, or actual damages, whichever is greater. A court may
14 increase the award of damages in an amount not more than three times
15 the actual damages sustained, or three thousand dollars per violation,
16 whichever is greater, upon a demonstration that a violation of the
17 section was willful.

18 (6) In addition to the remedies provided otherwise in this section,
19 a person whose rights have been violated under this chapter may enjoin
20 future violations and shall recover the reasonable attorneys' fees and
21 other litigation costs reasonably incurred and other equitable relief
22 as the court may order.

23 NEW SECTION. **Sec. 9.** INTERPRETATION. The provisions of this
24 chapter must be construed liberally for the accomplishment of the
25 purposes of this chapter. Nothing contained in this chapter repeals
26 other state law relating to privacy or the dissemination of private
27 information. Nothing contained in this chapter may be construed to
28 deny the right of a person to institute an action or pursue a civil or
29 criminal remedy based upon an alleged violation of his or her common
30 law rights or federal or state statutory rights.

31 NEW SECTION. **Sec. 10.** SEVERABILITY. If any provision of this act
32 or its application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

35 NEW SECTION. **Sec. 11.** CAPTIONS NOT LAW. Section captions used in
36 this chapter are not part of the law.

1 NEW SECTION. **Sec. 12.** CODIFICATION. Sections 1 through 11 of
2 this act constitute a new chapter in Title 19 RCW.

3 NEW SECTION. **Sec. 13.** EFFECTIVE DATE. This act takes effect July
4 4, 2001.

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